

REMARKS

In the present Amendment, claim 10 is amended. Claim 10 is amended to recite that 1,2-pentanediol or 1,2-hexanediol is contained in an amount of not less than 0.05% by mass and less than 12% by mass. Support may be found, *e.g.*, at page 14 of the present specification. No new matter is added. Upon entry of the Amendment, which is respectfully requested, claims 1, 3-7, 10, 13-14 and 17 will be pending.

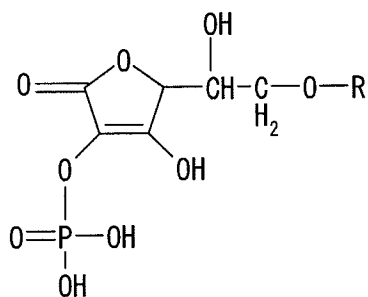
Referring to page 2 of the Office Action, claim 10 is rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. The Examiner indicates that claim 10 recites the limitation “the dihydric alcohol” in reference to 1,2-pentanediol or 1,2-hexanediol; however, there is insufficient antecedent basis for this limitation in the claim.

In view of the amendment to claim 10 in which “the dihydric alcohol” is deleted and replaced with “1,2-pentanediol or 1,2-hexanediol”, withdrawal of the rejection is respectfully requested.

Referring to page 2 of the Office Action, claims 1, 3-7, 10, 13, 14 and 17 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over EP 1077066 (Ito) in view of U.S. Patent No. 6,306,915 (Murata).

Applicants traverse and respectfully request the Examiner to reconsider in view of the following remarks.

The present invention relates to an agent for skin external use, comprising a salt of higher fatty acid ester of ascorbic acid-2-phosphoric acid ester, said higher fatty acid ester of ascorbic acid-2-phosphoric acid ester is represented by the following formula (1):



Formula (1)

wherein R is a residual group of an aliphatic carboxylic acid having 10 to 20 carbon atoms, and 1,2-pentanediol or 1,2-hexanediol, as recited in present claim 1. The present invention also relates to a stabilizer for an agent for skin external use containing a salt of higher fatty acid ester of ascorbic acid-2-phosphoric acid ester, said higher fatty acid ester of ascorbic acid-2-phosphoric acid ester being represented by the formula (1) shown above, wherein R is a group of an aliphatic carboxylic acid having 10 to 20 carbon atoms, said stabilizer comprising 1,2-pentanediol or 1,2-hexanediol or both, as recited in present claim 17.

Ito relates to an ascorbic acid derivative which may further comprise a moisturizer selected from polyhydric alcohols such as propylene glycol.

Murata relates to an emulsified composition comprising an emulsifier containing a sphingoglycolipid, a polyhydric alcohol and a fat or oil component.

Ito and Murata are different in their features and scope, and therefore, a person having ordinary skill in the art would not have been motivated to combine Ito and Murata with a reasonable expectation of success.

Furthermore, the objective of the present invention is to provide an agent for skin external use and a cosmetic, each of which is enhanced in stability with regard to occurrence of turbidity or precipitation with time.

Neither Ito nor Murata discloses or suggests that the combination of an ascorbic acid derivative and a specific polyhydric alcohol achieves improved stability of an agent for skin external use.

In this regard, Applicants submit a Declaration under 37 C.F.R. § 1.132 which provides evidence that the presently claimed invention achieves unexpectedly superior results as compared to the prior art. It is noted that the Declaration evidence corresponds to the discussion of experimentation presented in the response filed July 14, 2009.

In the Declaration, Examples 30 and 33 embody the presently claimed invention. Examples 30 and 33 demonstrate that by employing the claimed polyhydric alcohol, namely 1,2-pentanediol or 1,2-hexanediol, an agent for skin external use is obtained in which turbidity is not observed and excellent clarity is achieved. Comparative Example A, B, C and D are prepared by following the same method as disclosed in present Example 30; however, Comparative Example A, B, C and D employ alcohols that do not satisfy the requirements of the present invention. As a result, an agent for skin external use is obtained in which turbidity is observed.

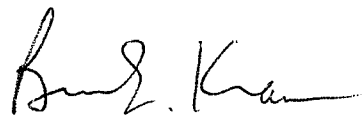
At least Comparative Examples A and B are more closely related to the present invention than Ito, and like Ito, Comparative Examples A and B employ propyleneglycol and dipropyleneglycol, respectively, as the alcohols in the agents for skin external. Therefore, the unexpectedly superior results of Examples 30 and 33 as compared to Comparative Examples A and B as demonstrated in the Declaration provide evidence that employing 1,2-pentanediol or 1,2-hexanediol as the alcohol in the agent for skin external use contributes to the superior and unexpected properties of the present invention as compared to Ito.

Accordingly, the presently claimed invention is patentable over Ito. Murata does not remedy the deficiencies of Ito. Therefore, Applicants respectfully request reconsideration and withdrawal of the § 103 rejection based on Ito in view of Murata.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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